

**IN THE UNITED STATES DISTRICT COURT FOR
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,

vs.)
Petitioner,)
vs.) **Civil No. 1:19-cv-01293-STA-jay**
NICKOLAS DUNCAN,)
Respondent.)

ORDER TO SHOW CAUSE

On December 18, 2019, the United States of America filed a Petition to Enforce an IRS Summons (ECF No. 1) and named Nickolas Duncan as the Respondent. On January 2, 2020, the Court ordered Respondent to show cause as to why the Court should not grant the government's petition and set a show cause hearing for February 21, 2020. The Court subsequently granted the government's motion to continue the hearing and reset it for May 19, 2020. On April 7, 2020, the United States filed proof of service (ECF No. 9), showing that the government had served Respondent with a copy of the Petition to Enforce the IRS Subpoena and a copy of the Court's order to show cause on March 26, 2020.

Federal Rule of Civil Procedure 12(a) gives a party to a civil action 21 days from service of the summons and complaint to file a responsive pleading. Fed. R. Civ. P. 12(a)(1)(A)(i); *see also United States v. Powell*, 379 U.S. 48, 58 n.18 (1964) (stating that the Federal Rules of Civil Procedure apply in actions to enforce an IRS summons and that “[t]he proceedings are instituted by filing a complaint, followed by answer and hearing”). When more than 21 days passed after the government had served Respondent with the petition and the show cause order, the Court entered an order on April 24, 2020, directing the Respondent to file an answer to the petition. The

Court gave Respondent 21 days to file his pleading. The Court cautioned Respondent that the failure to file a responsive pleading might result in an entry of default against him. The Court also ordered the government to have a copy of the Court's order served on Respondent and then to file proof of service on the record. The government's affidavit of service (ECF No. 16) showed that Respondent was served with the order on April 30, 2020, which made his answer due on or before May 22, 2020. The Court later continued the May 19, 2020, show cause hearing due to the ongoing Covid-19 public health crisis.

More than 80 days have now passed since the government served Respondent with the Court's order directing him to file an answer to the petition. Respondent has failed to file an answer within the time allowed by the Federal Rules of Civil Procedure or the extended period granted by the Court. The government has not taken any further action to prosecute its case. Therefore, the United States is ordered to show cause as to why this matter should not be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b). The government's show cause response is due within 14 days of the entry of this order.

IT IS SO ORDERED.

s/ **S. Thomas Anderson**
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: July 22, 2020